A2

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: Miami Date: SEP 30 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This statute provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The acting district director determined that the applicant was inadmissible to the United States because she falls within the purview of section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(6)(C)(i) of the Act states, in part:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(7) of the Act states, in part:

> (A)(i) Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission --
>
> > (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), is inadmissible.

The record reflects that on November 12, 1999, at Miami International Airport in Florida, the applicant applied for admission as a visitor for pleasure. She presented a Cayman Islands travel document containing a B1/B2 nonimmigrant visa. The applicant was referred to the Service secondary inspection for verification of the visa. During secondary inspection, it was confirmed that the visa was photo-switched, and it was noted that the biography page on the visa appeared to be counterfeit and page substituted.

In a sworn statement before an officer of the Service, the applicant insisted that the travel document was issued to her by the government of the Cayman Islands, and that the name on the document is her true and correct name. She claimed that she forwarded the travel document to the U.S. Consulate in San Jose, by mail, to acquire the visa. She further claimed that the travel document is hers, and that she was not aware that the nonimmigrant visa in the travel document was photoswitched and altered. The applicant stated that she and her family left Cuba to Grand Cayman on September 7, 1994, where she has been living and working at a bank. She further stated that she had traveled and made four entries into the United States (using her Cayman Islands travel document and U.S. visa), that she stayed in the U.S. for about one week on each visit, and that she was planning to stay here "until Monday."

The applicant was subsequently placed in removal proceedings for a hearing before an immigration judge after it was determined that she was inadmissible to the United States pursuant to sections 212(a)(6)(C) and 212(a)(7)(A)(i)(I) of the Act.

The Board, in *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), held that an applicant for admission to the United States is not inadmissible under section 212(a)(6)(C)(i) of the Act, as an alien who seeks or has sought to procure entry into the United States by fraud or the willful misrepresentation of a material fact where there is inadequate evidence that the applicant presented or intended to present fraudulent documents to a United States Government official in an attempt to enter on those documents.

The applicant, in this case, presented a fraudulent B-1/B-2 nonimmigrant visa to a United States Government official in an attempt to enter on those documents. Unlike the alien in *Matter of Y-G-, supra*, the applicant in this case insisted that she acquired the nonimmigrant visa from the U.S. Consulate in San Jose. The applicant, however, failed to submit evidence to corroborate her claim that she forwarded the travel document to the U.S. Consulate in San Jose, and that the visa was, in fact, issued by the U.S. Consulate. Furthermore, as maintained by the applicant, she had traveled and made four entries into the United States using her Cayman Islands travel document and the fraudulent U.S. visa. It

is, therefore, concluded that the applicant did intend to present the fraudulent nonimmigrant visa to the Service officer in an attempt to enter the United States on this document.

Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The applicant was offered an opportunity to submit evidence in opposition to the acting district director's findings. No additional evidence has been entered into the record. Further, the applicant is not the recipient of an approved waiver of such grounds of inadmissibility, nor is there evidence in the record that she is eligible to file for a waiver.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.